

1       IN THE CIRCUIT COURT OF THE STATE OF OREGON  
2               FOR THE COUNTY OF MULTNOMAH

3   The Estate of JESSE D.           )  
   WILLIAMS, deceased, by and    )  
4   through MAYOLA WILLIAMS,       )  
   personal representative,       )  
5                                    )  
      Plaintiff,                    )  
6                                    )  
      vs.                            )   No. 9705-03957  
7                                    )  
   PHILIP MORRIS INCORPORATED,    )   Afternoon Session  
8                                    )  
      Defendant.                    )   Volume 20-B

9  
10               TRANSCRIPT OF PROCEEDINGS

11       BE IT REMEMBERED that the above-entitled  
12   matter came on regularly for jury trial before the  
13   Honorable Anna J. Brown, Judge of the Circuit Court  
14   of the County of Multnomah, State of Oregon, on  
15   Friday, March 19, 1999.

16  
17               APPEARANCES

18       Raymond Thomas, William Gaylor  
      and Charles Tauman,  
19       Attorneys at Law,  
      Appearing on behalf of the Plaintiff;

20  
      James Dumas, Walt Cofer, Billy Randles,  
21       and Pat Sirridge,  
      Attorneys at Law,  
22       Appearing on behalf of the Defendant.

23               Dennis Apodaca  
              Official Court Reporter  
24               556A Multnomah County Courthouse  
              Portland, Oregon 97204  
25               248-3180

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Friday, March 19, 1999

P R O C E E D I N G S

(Open court; jury  
present:)

THE COURT: Mr. Gaylord.

MR. GAYLORD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GAYLORD:

Q. Dr. Swanson, when you were contacted by Mr. Dumas about this case, did you get any information about whether the Philip Morris lawyers had tried to contact any local oncologist or cancer doctors before they went to you?

A. I didn't even find out Philip Morris was involved until months after -- I didn't even know who the suit was against. I didn't know anything about Philip Morris. I knew it was a tobacco company but, no, I didn't know anything like that.

Q. Okay. I want to talk just a moment about this distinction of two sets of big words,

1 mucoepidermoid carcinoma and adenosquamous  
2 carcinoma.

3 A. Yes.

4 Q. You gathered a fair amount of literature,  
5 and I appreciate the chance to look at it during  
6 the lunch hour. Did you do this research yourself  
7 or did you ask somebody to do it?

8 A. Well, the librarian at the St. Vincent  
9 Medical Center got some of it for me, and a lot of  
10 it I got myself, and I got some articles from  
11 Mr. Dumas, also.

12 Q. Okay. Well, this stack of material that  
13 I have in my hand is all medical literature that  
14 at least most of it seems to have something to do  
15 about this question, those two different kinds of  
16 cancers.

17 A. And lung cancer in and of itself.

18 Q. Sure. Sure. I guess, just so it is not  
19 lost on anybody, if it had been, the importance  
20 here in this courtroom between mucoepidermoid  
21 cancer and adenosquamous cancer is one of them is  
22 and one of them isn't well-established to be a  
23 result of smoking cigarettes?

24 A. Absolutely.

25 Q. From the -- let me ask this: Does your

1 expertise in the pathology of tumors include such  
2 things, you are familiar with reversed metaplasia?

3 A. Reverse metaplasia, I'm not sure I am,  
4 no.

5 Q. You haven't read about or talked with any  
6 pathologist about the theory that what you see  
7 under a microscope seems to be a difference  
8 between mucoepidermoid carcinoma and adenosquamous  
9 carcinoma is really just that when the cells go  
10 bad, they can go in two different directions?

11 A. Well, I believe that -- I alluded to that  
12 earlier. That's part of the formation of any  
13 cancer.

14 Q. Okay. You understand that adenosquamous  
15 carcinoma is thought to result by some people from  
16 a single kind of cell that mutates, and as it  
17 progresses into a tumor some of the mutations  
18 become looking like glandular cells and some of  
19 them become looking like squamous cells?

20 A. Exactly.

21 Q. Okay. Are you familiar with the  
22 writings, including a number of them in the  
23 materials that you have to the effect that there  
24 is really no difference between these two cancers?

25 A. I have seen allusion to the fact that the

1 pathology is virtually indistinguishable, that  
2 taken in an isolated fashion, if you are only  
3 looking through a microscope at a slide and not  
4 including the entire spectrum of the patient's  
5 clinical presentation, the context in which that  
6 slide is derived, that it can be  
7 indistinguishable, yes.

8 Q. Well, in fact, some of the people that  
9 wrote the articles that you gathered here would  
10 say with respect to high-grade mucoepidermoid  
11 cancer --

12 A. Yes.

13 Q. -- which is the one we have been told  
14 about here. It says "high-grade" over there.  
15 High-grade mucoepidermoid cancer may just be  
16 adenosquamous cancer occurring in the location  
17 where this one was?

18 A. I have not seen it referred to as an  
19 adenosquamous carcinoma appearing somewhere. I  
20 have seen the pathology as being the same, but the  
21 cell origin being different.

22 Q. Well, let me see if I'm understanding the  
23 significance of some of the things in the material  
24 that you gathered. This is an article from  
25 Oncology called "Rare Pulmonary Tumors: A Review

1 of 32 Cases." Do you remember that article,  
2 Oncology, 1998?

3 A. I remember it vaguely. I haven't  
4 reviewed it in some time.

5 Q. Okay. It talks about the majority of  
6 lung cancers and it lists a bunch of them,  
7 including adenocarcinoma, adenosquamous carcinoma,  
8 large cell, small cell and squamous cell. It says  
9 those account for more than 99 percent of all  
10 primary lung cancers.

11 A. Yes, they do.

12 Q. And these authors studied 32 cases, and  
13 are you familiar with their conclusion where they  
14 say on Page 433 -- that's your highlighting, isn't  
15 it?

16 A. It is.

17 Q. Look at it as much as you need before I  
18 ask you a question, and then I will proceed.

19 A. Yeah.

20 Q. Okay. In the 32 cases that they reviewed  
21 they said, "It is often difficult to detect any  
22 obvious distinction between this disease,  
23 mucoepidermoid high grade and adenosquamous  
24 carcinoma, and we found no case that could be  
25 clearly diagnosed as high-grade mucoepidermoid

- 1 carcinoma rather than adenosquamous carcinoma."  
2 A. Looking at strict pathologic criteria.  
3 Q. Okay.  
4 A. Strictly microscopic.  
5 Q. This is an article, the abstract which  
6 includes the statement you highlighted, "The  
7 clinical and pathological features of malignant  
8 tumors were roughly the same as those of common  
9 pulmonary carcinomas."  
10 Do you think they took into account  
11 clinical as well as pathological criteria?  
12 A. Well, yeah, I'm sure they did.  
13 Q. And along similar lines, you recall the  
14 David Dail and Samuel Hammar book Pulmonary  
15 Pathology, second edition?  
16 A. Yes.  
17 Q. You have an excerpt here of some chapters  
18 and bibliographies from that book?  
19 A. Uh-huh.  
20 Q. And on Page 1285, I will show you your  
21 highlighting and ask you about it, under the title  
22 "Mucoepidermoid Tumors."  
23 A. Okay.  
24 Q. Does that remind you of it?  
25 A. Yes.



1 Q. Regarding the -- I will have to show you  
2 in context. It is talking about high-grade  
3 mucoepidermoid tumors as it goes on, and the  
4 statement, "The average duration of symptoms to  
5 death in these patients varied from 6 to 18 months  
6 and the average survival was 9.8 months. These  
7 might be better considered adenosquamous  
8 carcinomas."

9 A. That was his opinion, yes.

10 Q. That's in a book by Dr. Dail and  
11 Dr. Samuel Hammar. Are those respected  
12 authorities on pulmonary pathology?

13 A. They are, yes.

14 Q. Now, here is a slightly different point,  
15 while we are on this article. I will show you  
16 your highlighting on Page 1286. Right here.

17 A. Uh-huh.

18 Q. Okay. To foreshadow where we are going a  
19 little bit, you are not a pathologist but you know  
20 what the word keratinization means?

21 A. Yes, I do.

22 Q. That's something about when they stain  
23 the slide and whether or not there is an uptake of  
24 the red stuff?

25 A. Yes.

1 Q. So when pathologists refer to  
2 keratinization, means they stain the slide and  
3 they saw cells turning red or pink from the stain?

4 A. Right. It is a typical finding in cells  
5 that are differentiating or specializing along the  
6 squamous line.

7 Q. And that's a significant finding for the  
8 squamous part of an adenosquamous carcinoma?

9 A. Or for a mucoepidermoid carcinoma.

10 Q. And this says, "The different diagnosis  
11 in the higher-grade lesions is with poorly  
12 differentiated squamous carcinoma, especially when  
13 the few mucin --

14 THE REPORTER: Can you repeat that.

15 BY MR. GAYLORD:

16 Q. Let me back up. This is comparing  
17 mucoepidermoid to adenosquamous in this sentence,  
18 isn't it?

19 A. No, it is not. It is comparing it with  
20 squamous cell carcinoma.

21 Q. Okay. I'm sorry. And squamous is one of  
22 the two poorly differentiated cell types in a  
23 poorly differentiated adenosquamous carcinoma?

24 A. What he is getting at in that paragraph  
25 is comparing it to an established squamous cell

1 carcinoma, one of the most frequent types of lung  
2 cancer.

3 Q. Okay. In this sentence, in the section  
4 on mucoepidermoid tumors --

5 A. Yes.

6 Q. Now, I will do it again so the court  
7 reporter can get the whole thing.

8 "The different diagnosis -- between  
9 mucoepidermoid or these others -- in the higher  
10 grade lesions is with poorly differentiated  
11 squamous carcinoma, especially when the few mucin  
12 pools are missed and when the intermediate  
13 character of these cells is not readily apparent."

14 A. Right. What that is saying is that if  
15 you don't look closely, you can mistake this tumor  
16 for a squamous cell cancer. This has nothing to  
17 do with an adenosquamous because the mucin pools  
18 were missed.

19 Q. Let's each read the next sentence, okay,  
20 which says, "Significant keratinization" --  
21 that's that staining?

22 A. Yes.

23 Q. -- "should make one consider squamous or  
24 adenosquamous carcinoma a more likely diagnosis."

25 A. Yes.

1 Q. Did I read that right?

2 A. If there are no mucin pools.

3 Q. Okay. And keratinization is something  
4 that we find in the medical records in Jesse  
5 Williams' case, isn't it?

6 A. I believe there was some keratinization  
7 in the psychology.

8 Q. Right. Well, everything is turned off.  
9 I won't turn it on now.

10 In the cytopathology, that's when the  
11 pathologist, Dr. Franzini, read the brushings that  
12 we talked about?

13 A. Yes.

14 Q. This is the part that Dr. Gould didn't  
15 look at in his testimony for the jury.

16 MR. SIRRIDGE: Objection. This is  
17 argument at this point.

18 THE COURT: Overruled.

19 BY MR. GAYLORD:

20 Q. And Dr. Franzini did read the brushings  
21 and she said, "Central mass lung brushings and  
22 aspirate. Tumor cells present: Keratinizing  
23 squamous carcinoma"?

24 A. Yes.

25 Q. That's what she found?

1 A. Yes.

2 Q. I don't want to go through all of them,  
3 but there are other articles in here where several  
4 different authors say they believe that  
5 mucoepidermoid tumors and adenosquamous carcinomas  
6 are the same entity.

7 A. The same entity only pathologically. I  
8 don't recall anyone calling them the same tumor.

9 Q. Okay. Mucoepidermoid lung tumors by  
10 Richard Heitmiller and several others in the 1989  
11 Society of Thoracic Surgeons.

12 A. Right. Herman Grillo's (phonetic) group  
13 at the Mass. General in Harvard.

14 Q. I will show this to you. They said, "We  
15 believe that mucoepidermoid tumors and  
16 adenosquamous carcinomas are the same entity."

17 And they go on to say that they would use  
18 one term when it appears in the central bronchi.

19 A. Right. Pathologically, the same entity;  
20 clinically, central tumors, they make a  
21 distinction. Central tumors are mucoepidermoid  
22 cancers. Peripheral tumors are adenosquamous  
23 tumors. That just emphasizes the difficulty in  
24 trying to distinguish under the microscope in an  
25 isolated fashion what a tumor is.

1 Q. Clinical Pathologic Characteristics of  
2 Adenosquamous Carcinoma of the Lung by Takamori  
3 and a bunch of other Japanese physicians in 1990,  
4 but I can't find the name. It is in Cancer. And  
5 they said -- one of the authors suggested, "The  
6 additional possibility that adenosquamous  
7 carcinoma of the lung might include collision  
8 tumors, mucoepidermoid carcinoma of high-grade  
9 malignancy and tumors arising by potential and  
10 differentiated cells, whatever that means.

11 A. That was just speculation. Just prior to  
12 that he mentioned that the accepted origin of  
13 mucoepidermoid carcinomas is the bronchial end.

14 Q. It is established to your satisfaction,  
15 isn't it, Dr. Swanson, that adenosquamous  
16 carcinoma is established by smoking cigarettes?

17 A. I would refer to that as adenosquamous  
18 carcinoma has a strong association with cigarette  
19 smoking. I think in view of what is known about  
20 the microbiology of the formation of cancer and  
21 the genetic alterations that are responsible for a  
22 patient being susceptible to cancer, saying  
23 "cause" is an oversimplification.

24 Q. Well, it is a simplification that has  
25 been adopted by the Surgeon General, the American

1 Medical Association --

2 A. Yes.

3 Q. -- the World Health Organization, and  
4 virtually every medical organization or every  
5 organization we could list.

6 A. And if you read articles dealing with  
7 carcinogenesis within the last 10 to 15 years, it  
8 is much more frequently referred to as highly  
9 associated with lung cancer.

10 Q. I want to go to one more subject. You  
11 talked this morning about your dealings with your  
12 patients with respect to the question of smoking  
13 and health.

14 A. Yes.

15 Q. You told us you hate cigarette smoking  
16 and you told us it is strongly associated with  
17 many of the problems you deal with.

18 A. Yes.

19 Q. And I assume when you said that that you  
20 meant to include the problems that you deal with  
21 in the 7 to 10 percent of the cases that you do  
22 the lung cancer surgeries, as well as the other 90  
23 percent that are heart disease?

24 A. Sure. Sure.

25 Q. Okay.

1           A.    I testified that it is associated with  
2 lung cancer.

3           Q.    All right. And you said you tell your  
4 patients to stop smoking.

5           A.    Absolutely.

6           Q.    And you said, "Initially, all of my  
7 patients stop smoking."

8           A.    I said "virtually all," I believe.  
9 Certainly within the five to seven days that I  
10 have them in the hospital they have stopped.

11          Q.    I should have had you read my notes to  
12 me, because I couldn't figure out that word. It  
13 was "virtually" I wrote down. I thought you said  
14 "initially."

15          A.    Yeah.

16          Q.    You did say, initially, virtually all of  
17 your patients stop smoking?

18          A.    Yes.

19          Q.    I take it that when you tell them that  
20 they should stop smoking, virtually all of them do  
21 so. They must be impressed with something new  
22 that you are telling them.

23          A.    I think in my circumstance it is a lot  
24 easier than that. They are impressed with the  
25 scar that I put on their chest, the major



1 discomfort that they have just gone through, and  
2 the pretty earth-shattering confrontation with  
3 their own mortality.

4 Q. And, of course, there is sort of a forced  
5 cessation?

6 A. Reality check.

7 Q. That's not what I was going to say,  
8 though. Isn't it true that while they are in your  
9 care, because you're a surgeon and you are doing  
10 surgery on these people, there is a period of time  
11 when they probably are almost physically prevented  
12 from smoking because they are in the hospital?

13 A. Exactly.

14 Q. That's sort of a leg up on the problem  
15 because you give them --

16 A. It is a good start.

17 Q. They don't have a choice about stopping  
18 smoking to begin with?

19 A. Right.

20 Q. Would it be fair to say, though, when you  
21 explain it to these people what smoking has to do  
22 with their current and future health, you are able  
23 to impress upon them both with surgery and scars  
24 on their chest, but also with facts and  
25 information, something that they hadn't

1 appreciated previously to the degree necessary to  
2 quit?

3 A. I don't know whether it is any didactic  
4 education that I do. I don't sit down and go over  
5 the science with them. I just tell them to look  
6 at the circumstances that they find themselves in  
7 and ask themselves whether they want to come back.

8 Q. Well, would you agree generally with the  
9 proposition that most of your patients and most  
10 smokers need more awareness of the risks that they  
11 encounter as smokers?

12 A. Need more awareness?

13 Q. Yes.

14 A. Perhaps they need to be more consciously  
15 aware of what they already know.

16 Q. Okay. As a physician who treats patients  
17 whose conditions are a vast majority of the time  
18 related to smoking and health issues, do you keep  
19 abreast of the published medical information about  
20 smoking and health issues and patients' awareness?

21 A. I don't study that in depth, but I have  
22 contact with some.

23 Q. Okay. Are you a member of the American  
24 Medical Association?

25 A. Yes.

1 Q. As a member of the American Medical  
2 Association do you receive the Journal of the  
3 American Medical Association?

4 A. Yes.

5 Q. Commonly known as JAMA?

6 A. JAMA.

7 Q. And that's one of the -- one of the  
8 various medical problems.

9 Publications, many of which exist, that's  
10 one of the standard ones that virtually all  
11 physicians receive and pay attention to?

12 A. Yes.

13 Q. You agree with that. And when you get  
14 that, you review it for what might matter in your  
15 particular practice. You probably don't read it  
16 cover to cover?

17 A. It is a weekly journal. I filter out a  
18 good bit of it.

19 Q. You read the stuff up-to-date and current  
20 and applicable to your patients?

21 A. Usually.

22 Q. I wonder if you have had a chance to read  
23 the article published --

24 MR. SIRRIDGE: Could I see that? That  
25 wasn't in his stack, was it?

1 MR. GAYLORD: No.

2 BY MR. GAYLORD:

3 Q. Would you consider an article on smoking  
4 and health issues published very recently by JAMA  
5 to be a good, reliable, authoritative source on  
6 information applicable to your practice?

7 A. I would consider it one of many, yes.

8 Q. And an article entitled "Perceived Risks  
9 of Heart Disease and Cancer Among Cigarette  
10 Smokers" you would consider a useful source for  
11 you and your practice?

12 A. Yes.

13 MR. SIRRIDGE: Excuse me. Was there a  
14 foundation laid, Your Honor?

15 THE COURT: Yes. The witness  
16 acknowledged it was, among other sources,  
17 authoritative.

18 MR. SIRRIDGE: Authoritative. Thank you.  
19 I didn't hear it.

20 THE COURT: That's all right. Proceed.

21 BY MR. GAYLORD:

22 Q. Do you find in this authoritative  
23 statement from JAMA, the statement -- I need to be  
24 able to see it, too -- "Physicians' advice may  
25 help smokers assess their personal health risks

1 more realistically, but many smokers have not  
2 received such advice."

3 Does that comport with your experience?

4 A. Unfortunately, I think -- not my personal  
5 practice, but I think there are some physicians  
6 who are perhaps less forceful with encouraging  
7 smoking cessation.

8 Q. There is an abstract at the beginning of  
9 that article, as there usually is. It is kind of  
10 a preview of what you see if you read it in  
11 detail.

12 A. Yes.

13 Q. Do you see a conclusion section?

14 A. I do.

15 Q. Would you read the sentence highlighted,  
16 the first sentence of the conclusions in the  
17 article?

18 A. It says, "Most smokers do not view  
19 themselves at increased risk of heart disease or  
20 cancer."

21 Q. When you read the details of the results  
22 of the study, you find the basis for that sentence  
23 here, "Among current smokers, only 29 percent and  
24 40 percent perceive their risks of MI or cancer  
25 respectively as higher than other persons."

1 Do you see that?  
2 A. I see it.  
3 Q. It is an awkward sentence.  
4 So "MI" is what you deal with in the  
5 heart surgery, that's myocardial infarction?  
6 A. Heart attack.  
7 Q. What this is saying is that current  
8 smokers, only 29 percent of them realize they are  
9 at increased risk for heart attack. Is that a  
10 fair interpretation?  
11 A. That's what it appears to say, yes.  
12 Q. And only 40 percent of them understand  
13 that they are at a greater risk for cancer than  
14 other persons, right?  
15 A. That's what it says.  
16 Q. And tell the jury the date of publication  
17 of this article.  
18 A. March 17, 1999.  
19 MR. GAYLORD: Thank you, Doctor. That's  
20 all I have.  
21 THE COURT: Redirect.  
22 MR. SIRRIDGE: Thank you. I'm going to  
23 gather up some articles that Mr. Gaylord was  
24 using.  
25 THE COURT: Sure.

1 MR. GAYLORD: Would there be any  
2 objection to my making those Court exhibits from  
3 that stack?

4 MR. SIRRIDGE: Court exhibits for what?

5 MR. GAYLORD: To have them marked for  
6 demonstrative purposes.

7 MR. SIRRIDGE: We will take care of it  
8 afterwards.

9 MR. GAYLORD: Counsel, I have one more  
10 that was outside of the stack.

11

12 REDIRECT EXAMINATION

13

14 BY MR. SIRRIDGE:

15 Q. Dr. Swanson, Mr. Gaylord before the lunch  
16 on break said that he had run an internet search  
17 on your publications, and you were looking for a  
18 copy of your resume at that time. I believe he  
19 saw 11 publications.

20 I will just hand you your resume here.  
21 If you will indicate for the record how many  
22 publications, scientific publications, there are.

23 A. At this time there were 21 publications  
24 and 11 formal presentations.

25 Q. And do you have several presentations and

1 articles that have been published since that  
2 resume?

3 A. Yes. This is not up-to-date.

4 Q. And, Dr. Swanson, are several of those  
5 publications -- do several of them deal with lung  
6 surgery?

7 A. Yes.

8 Q. And do several of the publications deal  
9 with the diagnosis and treatment of cancer?

10 A. Yes.

11 Q. Dr. Swanson, there is some discussion  
12 about the differences between mucoepidermoid  
13 carcinoma and adenosquamous carcinoma, and I  
14 believe you made some statements about the  
15 pathology. Could you tell me, Doctor, are the  
16 clinical symptoms of those two cancers, are they  
17 indistinguishable?

18 A. I think there is some fairly significant  
19 differences between mucoepidermoid carcinoma and  
20 adenosquamous carcinoma in terms of the long-term  
21 evolution of the two different tumors.

22 Q. All right. Could you just briefly  
23 summarize the clinical differences between those  
24 two carcinomas?

25 A. Sure. An adenosquamous carcinoma, as I



1 testified earlier, is a more aggressive, rapidly  
2 growing tumor, more rapidly metastasizing, or  
3 spreading to other sites within the body. In  
4 addition to the peripheral location that we have  
5 spoken about already.

6         A mucoepidermoid carcinoma has frequently  
7 this low-grade, slow-growing phase which can at  
8 some point differentiate or become less  
9 specialized and become the more aggressive, more  
10 virulent high-grade mucoepidermoid carcinoma that  
11 Mr. Williams was finally diagnosed with.

12         Even in its high-grade form, the  
13 mucoepidermoid carcinoma, while being much more  
14 aggressive than the low-grade form, still does not  
15 live up to the virulence and aggressiveness of an  
16 adenosquamous carcinoma.

17         Q. And, Dr. Swanson, are these two tumors,  
18 adenosquamous carcinoma and mucoepidermoid  
19 carcinoma high grade, are they thought to come  
20 from two different cells?

21         A. Yes. Absolutely. Which may well help to  
22 explain why one tumor can be related to smoking  
23 and the other may well not be related to smoking,  
24 the cell in origin is different.

25         Q. And, Dr. Swanson, Mr. Gaylord mentioned

1 the issue of keratin. Do you remember that?

2 A. Yes, I do.

3 Q. Would you expect to see cells stained  
4 with keratin in high-grade mucoepidermoid  
5 carcinoma?

6 A. Yes, it is quite possible.

7 Q. Why is that?

8 A. Because some -- in a mucoepidermoid  
9 carcinoma, as I stated earlier, some of the cells  
10 are trying to differentiate in that direction  
11 toward the squamoid specialization of the cell.  
12 Those types of cells can, if they differentiate  
13 far enough, produce keratin. It is their nature.

14 Q. Is the keratin side of the cells, or the  
15 keratin part, is that the part of mucoepidermoid  
16 which is the epidermoid side?

17 A. Yes. Exactly. Epidermoid and squamoid  
18 are two terms that you will hear used  
19 interchangeably. They both mean basically the  
20 same thing.

21 Q. Mr. Gaylord asked you about  
22 Dr. Franzini's cytology diagnosis of adenosquamous  
23 carcinoma.

24 A. Yes, he did. That's what he was  
25 stressing.

1 Q. That was not the final tissue diagnosis  
2 in pathology, was it?

3 A. Well, no cytology is never nearly as good  
4 as a good histological sample. The best thing to  
5 really to understand what a tumor is, is to have a  
6 surgeon take it out so you can cut up and examine  
7 the whole tumor. It is like the old story of the  
8 seven blind men examining an elephant. If all you  
9 are feeling is the trunk, you don't know what an  
10 elephant is. Cytology is simply feeling one part  
11 of the elephant.

12 Q. Doctor, are both -- I'm going to show you  
13 this article that Mr. Gaylord did -- or actually  
14 it is an excerpt of the Dail and Hammar book on  
15 pulmonary pathology. I will direct your attention  
16 to Page 1286 down here in the right-hand corner.  
17 What does that say about the differential  
18 diagnosis of adenosquamous carcinoma?

19 A. It says -- we have read the words before.  
20 Should I read them again?

21 Q. Yes.

22 A. The words are, "The different diagnosis,"  
23 which is the same thing as differential diagnosis,  
24 "in the higher grade lesions is with poorly  
25 differentiated squamous carcinoma, especially when

1 the few mucin pools are missed and when the  
2 intermediate character of these cells is not  
3 readily apparent."

4 Q. I was pointing out the next paragraph.

5 A. Okay.

6 Q. What is in the differential diagnosis for  
7 adenosquamous carcinoma?

8 A. Adenocarcinomas are in the differential  
9 diagnosis of both low and high-grade lesions.

10 Q. Let me ask you, Doctor, if you will read  
11 that paragraph to yourself and see if you can  
12 answer the question, do Drs. Dail and Hammar  
13 indicate it is important to make an effort to  
14 distinguish between these two cancers? Would you  
15 consider the question and read that paragraph?

16 A. Yes. Clearly, it is always in a  
17 patient's best interest to make a distinction  
18 between the different types of tumors that he may  
19 have, and they allude to the difference in  
20 prognosis as being an excellent reason for trying  
21 to find a real distinction between the two.

22 Q. And what is the difference in prognosis  
23 that those authors are discussing?

24 A. Well, simply that the adenosquamous is a  
25 more rapidly lethal tumor and that the

1 mucoepidermoid, as we discussed earlier, is a  
2 little less so. Prognosis is a little better with  
3 mucoepidermoid.

4 Q. So let me ask you one final question,  
5 Doctor. Do most of your patients, in your  
6 opinion, know the risks of smoking?

7 A. I find the JAMA article unbelievable in  
8 that my patients -- perhaps we live in a little  
9 bit more sophisticated area of the country than  
10 this article was done in -- but I would find it  
11 very unusual that I told a patient that cigarette  
12 smoking was a risk for either myocardial  
13 infarction or cancer and he said he didn't know.  
14 That's simply unbelievable.

15 MR. SIRRIDGE: Thank you. That's all I  
16 have.

17 THE COURT: Thank you, Dr. Swanson. You  
18 may step down.

19 Mr. Dumas, are you next?

20 MR. DUMAS: Mr. Gaylord -- Mr. Randles is  
21 next, Your Honor.

22 THE COURT: It wouldn't be Mr. Gaylord.

23 MR. DUMAS: No, it would not be.

24 THE COURT: All right. Mr. Randles, what  
25 do you have for us next?

1 MR. RANGLES: Your Honor, we have a  
2 couple of depositions to read. They shouldn't  
3 take long. The first is a deposition of Darlene  
4 Williams, who is Mr. Jesse Williams' daughter.

5 THE COURT: Good afternoon.

6 Would you identify the reader, please,  
7 for the record and the date of the testimony.

8 THE READER: My name is Jayn Kellar, and  
9 the date of the testimony is September 2, 1998.

10 THE COURT: Thank you.

11 THE READER: K-E-L-L-A-R, J-A-Y-N.

12 THE COURT: Thank you very much.

13 Okay, Mr. Randles.

14

15 DARLENE WILLIAMS

16 was thereupon called as a witness on behalf of the  
17 Defendant and, after having been first duly sworn,  
18 was examined and testified as follows:

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## DIRECT EXAMINATION

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BY MR. RANGLES:

Q. Could you state your full name for the record, please.

A. Darlene Williams.

Q. What is your date and place of birth?

A. June 2nd, 1954.

Q. June 2nd?

A. Uh-huh. Portland, Oregon.

Q. Excluding any conversations you may have had with any of your lawyers, can you tell me the first time that you found out about this lawsuit?

A. This summer.

Q. This summer? Who was that in discussion with?

A. My sister Joann.

Q. Okay. What did Joann tell you about the lawsuit?

A. She said -- I don't remember what she said. That there was a lawsuit.

Q. Anything else?

A. That's pretty much it.

Q. Did you have any discussions with any of your other siblings or your mother about this

1 lawsuit?  
2 A. We talked about it.  
3 Q. Who did you talk with?  
4 A. My mother.  
5 Q. And when did you talk with your mother  
6 about this lawsuit?  
7 A. Just pretty much around the same time  
8 that Joann mentioned it.  
9 Q. What did your mother tell you about it?  
10 A. The same thing.  
11 Q. Just that a lawsuit had been filed?  
12 A. Yeah.  
13 Q. Did you have any discussions with your  
14 father about potentially filing this lawsuit?  
15 A. No.  
16 Q. Do you know whose idea in the family it  
17 was to file this lawsuit?  
18 A. I believe it was my dad.  
19 Q. But you never talked to him about that?  
20 A. No.  
21 Q. Are you a smoker?  
22 A. Yes.  
23 Q. How long have you been a smoker?  
24 A. Oh, gosh, off and on ten years.  
25 Q. So did you start smoking around the end



1 of the 1980s?  
2 A. Yeah. Probably.  
3 Q. Have you ever quit smoking?  
4 A. Yes.  
5 Q. How many times have you quit smoking?  
6 A. About five.  
7 Q. When was the first time that you quit?  
8 A. '82.  
9 Q. What brand were you smoking when you quit  
10 until 1982?  
11 A. I can't remember.  
12 Q. Do you remember how many cigarettes a day  
13 you were smoking in 1982 when you quit?  
14 A. No.  
15 Q. Tell me how you went about quitting in  
16 1982.  
17 A. I just stopped.  
18 Q. Did you quit cold turkey, as they say?  
19 A. Yes.  
20 Q. How long did you quit for?  
21 A. Five years.  
22 Q. So you didn't smoke cigarettes between  
23 1982 and 1987; is that right?  
24 A. Uh-huh.  
25 Q. When was the second time that you quit?

1           A.    I can't remember.  
2           Q.    Well, you said you have quit about five  
3 times; is that right?  
4           A.    Yes.  
5           Q.    When was the last time that you quit?  
6           A.    Oh, two years ago.  
7           Q.    And how did you quit two years ago? What  
8 did you do?  
9           A.    I just tapered myself. Just kind of --  
10          Q.    Smoked a few less cigarettes per day?  
11          A.    Yeah, gradually.  
12          Q.    I'm sorry. How much were you smoking in  
13 1996 before you quit?  
14          A.    I can't remember.  
15          Q.    How long did it take you to cut down from  
16 the amount you were smoking to quitting in 1996?  
17          A.    About five months.  
18          Q.    Did you seek any medical or professional  
19 help?  
20          A.    No.  
21          Q.    The other occasions that you have quit,  
22 have you ever sought any medical or professional  
23 help?  
24          A.    Yes.  
25          Q.    On how many occasions?

1 A. One.  
2 Q. Tell me about that occasion.  
3 A. Cigarette patches.  
4 Q. When was that?  
5 A. Three months ago.  
6 Q. At that time were you smoking more than  
7 one or two packs a day?  
8 A. No.  
9 Q. Did you cease smoking when you were using  
10 the patches?  
11 A. Pardon me?  
12 Q. Did you cease smoking when you were using  
13 the patches?  
14 A. Did I stop?  
15 Q. Yes, ma'am.  
16 A. No.  
17 Q. Did you read the instructions provided  
18 with the nicotine patches?  
19 A. Yes.  
20 Q. Did it advise you that you shouldn't  
21 smoke at the same time?  
22 A. Yes.  
23 Q. Have you sought any professional help any  
24 other times in your effort to quit smoking?  
25 A. No.

1 Q. Tell me the years that you lived at home  
2 with your parents, obviously starting with 1954  
3 when you were born.  
4 A. Through my high school years.  
5 Q. So approximately till 1972?  
6 A. Yeah, until I was 18.  
7 Q. In 1972, is that when you left the family  
8 home?  
9 A. I'm not sure of the date. I know I was  
10 18 years old.  
11 Q. Okay. How much contact did you have with  
12 your father once you moved away from home? And  
13 what I mean by that is, did you see him on a  
14 weekly basis or on a daily basis?  
15 A. No.  
16 Q. How often would you see him?  
17 A. Whenever I would go to visit, if he was  
18 there, I would see my dad.  
19 Q. How often would that be?  
20 A. I have no idea.  
21 Q. Was it more regularly than a monthly  
22 basis, on average?  
23 A. Probably.  
24 Q. Was it on a weekly basis?  
25 A. Not all the time.

1 Q. Did you ever work with your father?  
2 A. Yes.  
3 Q. When did you work with your father?  
4 A. When I was a child and through my teen  
5 years.  
6 Q. So while you were still living at home?  
7 A. At home.  
8 Q. And was that in the cleaning business?  
9 A. Yes.  
10 Q. Is that something you do during the  
11 school holidays, or is that something you would do  
12 regularly through the year?  
13 A. I think we did it all the time. We  
14 worked with Dad, we worked with him.  
15 Q. What kind of places would your father  
16 clean?  
17 A. I remember Norris, Beggs & Simpson.  
18 Q. Was that the insurance company? What  
19 kind of company is that? What kind of business?  
20 A. I don't remember. I remember Johnny  
21 Johnson.  
22 Q. What kind of business was that?  
23 A. I remember that was a -- gymnastics, or  
24 something like that. It was gymnastics, or some  
25 kind of --

- 1 Q. It was a gym?
- 2 A. Yeah, it was a gym. It was called
- 3 gymnastics.
- 4 Q. Do you remember any others?
- 5 A. He worked for the DMV, and that's --
- 6 there was others, but I can't think of them right
- 7 offhand. Those are the main ones that I remember.
- 8 Q. Did any of your siblings also work with
- 9 your father?
- 10 A. Yes.
- 11 Q. Who?
- 12 A. All of us.
- 13 Q. Was this all during the same timeframe
- 14 when you were all living at home?
- 15 A. Yes.
- 16 Q. Did your father have any employees other
- 17 than you and your siblings?
- 18 A. Yeah, us, that's it.
- 19 Q. He didn't have any employees outside of
- 20 the family?
- 21 A. No.
- 22 Q. During the time that your parents were
- 23 married, did they ever get separated?
- 24 A. Never.
- 25 Q. To your knowledge, did they ever receive

1 marriage counseling?  
2 A. Never.  
3 Q. Did you ever hear your parents argue  
4 about the subject of smoking?  
5 A. Yes.  
6 Q. Okay. When was the first -- when I say  
7 "argument," I mean argument, discussion. When was  
8 the first time you heard them argue or discuss  
9 smoking?  
10 A. There's always been that.  
11 Q. For as long as you can remember?  
12 A. Yeah.  
13 Q. What would be the import of the  
14 conversation?  
15 A. That Dad -- you know, my mom wanted him  
16 to quit.  
17 Q. So your mom would be on him to quit  
18 smoking?  
19 A. Yeah.  
20 Q. And that's gone on for as long as you can  
21 remember, right?  
22 A. Yes.  
23 Q. And would your mother say to your  
24 father -- and what would your mother say to your  
25 father during those conversations?

1       A.    She would say that she would -- he  
2    could -- he would quit.

3       Q.    Did she tell him why?

4       A.    Yes.

5       Q.    What did she tell him?

6       A.    She said, you know, that was killing him.

7       Q.    What was your father's response?

8       A.    He would say, "Yeah, I know, honey, but I  
9    can't" -- he said, you know, "I can't," and get  
10   mad and -- you know, and leave out of the room or  
11   something.

12      Q.    Did you ever have any conversations with  
13   your father when you told him that he should quit  
14   smoking?

15      A.    Did I ever have any conversations with  
16   him about quitting smoking?

17      Q.    Yes, ma'am.

18      A.    No.

19      Q.    Did you ever tell him that smoking was  
20   bad for him?

21      A.    You know, I did have -- in the last few  
22   years, I do remember -- I remember I hugged Dad  
23   and said, "Dad, I hope you quit. I hope you stop,  
24   quit," you know, "I hope you quit smoking." And I  
25   was smoking at the time, too. I would say, "Dad,



1 if you stop, I'm going to stop."  
2 Q. What did he tell you?  
3 A. He was trying, you know. It was like we  
4 had this thing, and he was -- he was trying.  
5 Daddy was, you know -- he really -- you  
6 know, he really wanted to, because I had -- you  
7 know, I would encourage him like that, you know.  
8 And he would, like, try not to smoke around me a  
9 little bit, you know, like that. So he tried.  
10 Q. Were you guys trying to quit together?  
11 A. Kind of, yeah.  
12 Q. And you say that was about three years  
13 ago?  
14 A. No, I didn't say.  
15 Q. I'm sorry.  
16 A. In the last few years.  
17 Q. Last few years. Sometime in the '90s?  
18 A. Yeah.  
19 Q. Did you tell him that you had  
20 successfully quit on five previous occasions?  
21 A. Yes. Well, he knew. He seen me.  
22 Q. What did he say about that?  
23 A. He never said anything. He told Mom. He  
24 told my mother he was happy.  
25 Q. He was happy smoking?

1           A.    No, he was happy that I had quit smoking.

2           Q.    Okay.  He never said to you, "You have  
3 quit, I can quit"?

4           A.    No.

5           Q.    Other than that conversation, did you  
6 ever have any other discussions with your father  
7 about his smoking?

8           A.    Pretty much just what I said, you know.  
9 I would say those things, you know, "Dad, I don't  
10 want" -- you know, "You might get a heart  
11 condition or something."  I would try to be hard  
12 and say something like that.

13          Q.    Is that something that you would tell him  
14 over the years, or is that just something that you  
15 told him in the last few years?

16          A.    In the last few years.

17          Q.    Did you ever hear any of your siblings  
18 tell your father that he should quit smoking?

19          A.    Oh, yes.

20          Q.    Has that been constant throughout the  
21 years?

22          A.    No, it's just I remember -- I know for  
23 sure, because my brother Jess is very outspoken  
24 about cigarette smoking and he would most  
25 definitely speak strongly about it.

1 Q. When was the first time that you heard  
2 Jesse tell your dad he should quit smoking?

3 A. Just within the last maybe few years.

4 Q. What would your brother say to your  
5 father about it?

6 A. Say, "Dad, you know, cigarettes' going to  
7 kill you." I can just hear him saying that. "You  
8 need to quit. It is bad for your house, bad for  
9 Mom," you know. "If I can quit, you know, anybody  
10 can."

11 Q. What would your father say to him?

12 A. He would say, "Yeah" -- he said, "Son,"  
13 he said -- he said, "I'm glad." He said, "I'm  
14 trying. I know it is bad. I'm trying."

15 Q. Do you ever remember hearing any of your  
16 other siblings tell your father he should quit?

17 A. Freda, Joann, Glenn.

18 Q. You have heard all your siblings tell  
19 your dad he should quit?

20 A. I don't recall my youngest brother  
21 Calvin, but I know we've all said something to  
22 Dad.

23 Q. Did any of you, you or your siblings, say  
24 anything to your father about quitting smoking  
25 when you were living at home with your parents?

1 A. No.

2 Q. When was the first time you can remember  
3 any one of your siblings telling your father he  
4 should quit?

5 A. Since we were -- since we've been adults.

6 Q. Would that be in the '70s?

7 A. '80s, '90s.

8 Q. Has it been fairly constant from the  
9 1980s then that you and your siblings have told  
10 your father that he should quit?

11 A. You know, I wasn't always around, so I  
12 don't know, you know, how often they spoke on it,  
13 but I -- but just if I happened to be there, you  
14 know, circumstances came up, it would be said. So  
15 I don't know how frequent.

16 Q. But you first heard it in the 1980s; is  
17 that right?

18 A. I'm assuming.

19 Q. Did your dad ever tell you any stories  
20 from any Army days?

21 A. Yeah.

22 Q. What would he tell you?

23 A. Oh, I remember this one, this first one  
24 that he told me, I remember he said because there  
25 was a lot of mosquitoes. And they gave them

1 cigarettes, they gave all -- they came out with  
2 this big thing of -- a box of, whatever, Army  
3 things, and they'd just passed out these  
4 cigarettes the first time he started smoking, and  
5 they gave out all the GIs cigarettes. And they  
6 would take -- to keep the bugs away. That was one  
7 of the stories.

8 Q. Were those cigarettes provided by the  
9 Army?

10 A. The Army provided those to all those GIs.  
11 And he told me with his brother -- I think his  
12 brother was stationed there, just, you know,  
13 some -- just different little funny things, and  
14 that -- you know, stuff like that. But I remember  
15 that particular one.

16 Q. Okay. Do you know when your father  
17 started smoking?

18 A. No.

19 Q. Had he been a smoker for as long as you  
20 can remember?

21 A. Long as I can remember. I remember being  
22 a little kid, I remember sitting and it hanging  
23 out of his mouth.

24 Q. Did he tell you he started smoking in the  
25 Army?

1       A.    Yeah.  He told me that when I was real  
2   young, when I was a teenager.  
3       Q.    What's the first brand of cigarettes you  
4   remember your father smoking?  
5       A.    Marlboros, I think -- yeah, Marlboros.  
6       Q.    When was that, do you remember?  
7       A.    I remember that -- when I remember?  Ask  
8   me that again.  
9       Q.    Yes.  Which brand do you remember your  
10   father smoking?  
11      A.    Marlboros.  
12      Q.    Do you recall when about that was?  I  
13   don't need a day, just an approximate year.  
14      A.    When I was a kid.  
15      Q.    When you were a small child?  
16      A.    Uh-huh.  
17      Q.    Do you remember, was it filtered or  
18   unfiltered?  
19      A.    I don't know.  
20      Q.    Have you ever seen or did you ever see  
21   your father smoke any other brands?  
22      A.    I -- I don't know.  Probably so.  I --  
23   that's the one that sticks out, but I don't -- I  
24   don't know.  I never -- you know, I never knew he  
25   was a smoker, so I never really -- I didn't look

1 at what he smoked or anything, I just -- I just  
2 knew he smoked. I remember seeing the packs.

3 Q. Do you remember what color the pack was?

4 A. I remember a yellow and white pack. I  
5 think it was Marlboros.

6 Q. And is that the color of the first pack  
7 that you remember him smoking?

8 A. I remember -- I think, yeah -- yeah, it  
9 was yellow. Yellow.

10 Q. Do you ever recall him smoking any other  
11 packs that had different other colors from the  
12 yellow and white that you have just described?

13 A. Seemed like I remember a Benson & Hedges.  
14 I do remember Benson & Hedges.

15 Q. When was that?

16 A. I have no idea, but I remember.

17 Q. Was that prior to or after the Marlboros?

18 A. After.

19 Q. Do you remember what color pack that came  
20 in?

21 A. I don't remember.

22 Q. Do you remember any other brands or  
23 colors of packs that you remember your father  
24 smoking?

25 A. I remember that he was trying to -- when

1 he was trying to quit, and that's been recently,  
2 and he was -- he was trying to quit and he was  
3 saying that he would get, like, lights. There was  
4 something like lights, or there was -- because he  
5 was saying like -- light. He read that light  
6 cigarettes, you know, less nicotine, so he was  
7 trying to cut down that way. But I don't remember  
8 the name. I don't remember the name or anything  
9 like that.

10 Q. When was the first time that you remember  
11 him smoking a light cigarette?

12 A. Oh, gosh, been four years maybe. Yeah.

13 Q. Okay. Other than cigarettes that came in  
14 a yellow and white pack, and other than Benson &  
15 Hedges, and other than the lights, whatever brand  
16 that was, do you remember your father smoking any  
17 other brand?

18 A. Not to my knowledge.

19 Q. Do you recall how many cigarettes a day  
20 your father smoked?

21 A. I have no idea, but I know it was a lot.  
22 I don't know.

23 Q. Did the amount vary over time; do you  
24 know?

25 A. I don't know.



1 Q. Do you know if it was more than a pack a  
2 day?  
3 A. I don't know.  
4 Q. Did he ever tell you why he smoked  
5 Marlboros?  
6 A. Why he what?  
7 Q. Why he smoked Marlboro cigarettes.  
8 A. No.  
9 Q. Did he say he liked the taste?  
10 A. He didn't say.  
11 Q. Your father ever tell you that he found  
12 smoking relaxing?  
13 A. No.  
14 Q. Did your father ever try to quit smoking?  
15 A. Yes.  
16 Q. When was the first time that you remember  
17 your father trying to quit smoking?  
18 A. Let me think. In the last few years,  
19 Daddy has always tried to. He has cut back, you  
20 know, with the lights, and he would try to, you  
21 know, not smoke so many, you know. Try to stretch  
22 them out. Just different little tricks or things  
23 like that, you know, because, you know, he was --  
24 he was aware, you know, but he couldn't.  
25 Q. And that was over the last few years --

1           A.    Yeah.  
2           Q.    -- of his life?  
3           A.    That I -- yeah.  
4           Q.    Prior to that time, to your knowledge,  
5 did your father ever try to quit?  
6           A.    I don't know.  
7           Q.    Did anyone ever tell you that he tried to  
8 quit before that time?  
9           A.    I don't remember.  
10          Q.    During the last few years that you talked  
11 about when he tried to quit smoking, what did he  
12 do to try and quit?  
13          A.    Like I said, you know, change to the  
14 light, trying to stretch the amount. Make them  
15 last.  
16          Q.    Was he successful in cutting down at all?  
17          A.    Well, he would go back to the other, what  
18 he usually did, so obviously not.  
19          Q.    Oh, for a period of time he would smoke  
20 light cigarettes and then go back to whatever  
21 brand he had been smoking?  
22          A.    Yeah. It wasn't working for him.  
23          Q.    What brand would he go back to?  
24          A.    I -- I'm not sure. I don't know what he  
25 was smoking. I don't remember.

1 Q. Do you remember the color of the package?  
2 A. No.  
3 Q. Did he ever seek help from a doctor or  
4 other professional to help him quit smoking?  
5 A. He had patches -- or not patches.  
6 Those -- those little gums.  
7 Q. Nicorette gum?  
8 A. Yeah.  
9 Q. Do you know what timeframe he tried the  
10 gum?  
11 A. You mean in years, or timeframe -- what  
12 do you mean?  
13 Q. To your knowledge, when did he first  
14 start using the gum in his efforts to quit  
15 smoking?  
16 A. In the last few years.  
17 Q. Did it help him cut down at all?  
18 A. I have no idea.  
19 Q. To your knowledge, did he continue to  
20 smoke while he was using the gum?  
21 A. I'm not sure. I don't know.  
22 Q. To your knowledge, was your father ever  
23 told to quit smoking by a doctor?  
24 A. Not to my knowledge.  
25 Q. Did your father ever tell you that he was

1     addicted to smoking?  
2         A.     No.  
3         Q.     Did your father ever tell you that he  
4     couldn't quit smoking?  
5         A.     Yes.  
6         Q.     When did he tell you that?  
7         A.     He said it more than once.  
8         Q.     When was the first time he told you that?  
9         A.     Just throughout. When it became a  
10    discussion, you know, for the family, knowing  
11    about cigarettes was dangerous and killing people,  
12    in the last ten years or so.  
13         Q.     What did he tell you?  
14         A.     He would say that he wished he could quit  
15    and he hate -- "I hate those damn things."  
16         Q.     And did he tell you why he couldn't quit?  
17         A.     He didn't know. I don't know. He just  
18    said he wished he could quit.  
19         Q.     But he knew smoking was bad for him,  
20    right?  
21         A.     Yes.  
22         Q.     When you were growing up with your  
23    siblings in the family home with your parents, did  
24    your parents ever give you any lectures on  
25    smoking?

1 A. There was not a discussion on that, no.  
2 Never.

3 Q. Did you ever hear either of your parents  
4 discuss smoking with your siblings?

5 A. No. Oh, yes, I remember, because I  
6 remember my youngest brother smoking.

7 Q. Who is he?

8 A. Calvin. And that was a no-no. He snuck  
9 and smoked and so, of course, "You know how bad,"  
10 and blah, blah, blah. You know it was bad and  
11 that he shouldn't do that.

12 Q. When you say it was a no-no, what do you  
13 mean by that?

14 A. That was my mother saying that to him,  
15 that he shouldn't smoke.

16 Q. Did your father ever tell any of you guys  
17 that you shouldn't smoke?

18 A. Yeah, I remember that. We shouldn't  
19 smoke.

20 Q. Did he tell you that?

21 A. Yeah, he did.

22 MR. RANGLES: Your Honor, that completes  
23 the reading of this deposition.

24 THE COURT: All right. Just one moment.

25 Mr. Gaylord, I understand that you have

1 to be excused at this point.  
2 MR. GAYLORD: Yes, Your Honor.  
3 THE COURT: All right. Mr. Sirridge is  
4 already excused.  
5 Jurors, I am sending counsel to take care  
6 of something that we will be presenting to you  
7 next week. We are continuing on with one more  
8 reading, and when that's concluded, your work  
9 for today will be finished, so just bear with us  
10 a little stretch longer and then you will be  
11 able to enjoy a little bit of the sunny  
12 afternoon. Okay.  
13 MR. RANGLES: May I exchange readers?  
14 THE COURT: Thank you, Ms. Kellar.  
15 MR. RANGLES: Your Honor --  
16 THE COURT: Hold on a minute.  
17 MR. GAYLORD: I was talking to Counsel.  
18 I'm not sure what you said. I need to take the  
19 films with me.  
20 THE COURT: You do what you need to do  
21 and we will let you get organized and then we  
22 will proceed.  
23 Thank you, Mr. Gaylord.  
24 Will you tell us your name again for the  
25 record.

1 THE READER: Nelson Koga, K-O-G-A.

2 THE COURT: And whose testimony will  
3 Mr. Koga be reading?

4 MR. RANGLES: We will be reading the  
5 deposition of Glenn Douglas Williams, the son of  
6 Jesse Williams. This was taken on September  
7 1st, 1998.

8 THE COURT: Okay. Thank you.

9 MR. RANGLES: Thank you.

10

11 GLENN DOUGLAS WILLIAMS

12 was thereupon called as a witness on behalf of the  
13 Defendant and, after having been first duly sworn,  
14 was examined and testified as follows:

15

16 DIRECT EXAMINATION

17

18 BY MR. RANGLES:

19 Q. For the record, would you please state  
20 your full name.

21 A. Glenn Douglas Williams.

22 Q. And your date of birth, please.

23 A. 4/26/53.

24 Q. How old are you, Mr. Williams?

25 A. 45.

1 Q. Am I correct in understanding that you  
2 are the eldest, you are Jesse Williams' oldest  
3 son?

4 A. Yes.

5 Q. You were born and raised in Portland?

6 A. Yes.

7 Q. Did you live in the family home with your  
8 father, Jesse, and Mayola, your mother, while you  
9 were growing up the whole time?

10 A. Yes.

11 Q. How old were you when you moved out of  
12 the family home?

13 A. 23.

14 Q. And after you moved out, when you were  
15 23, did you ever move back into the family home  
16 for any significant period of time?

17 A. Yes.

18 Q. Okay. Tell me about the first time you  
19 moved back, how long you were there and under what  
20 circumstances you were there.

21 A. I moved back about 30 -- when I was about  
22 30.

23 Q. And how long did you live in the family  
24 home the second time, I will call it?

25 A. Approximately a few months, I believe.



1 Q. Just a few months?

2 A. Yes.

3 Q. Did you move back in again, or is that  
4 the last time you lived in the family home?

5 A. It was the last time -- well, excuse me.  
6 No. There was one other time.

7 Q. Tell me about that.

8 A. After I was divorced, and that was for  
9 about two years.

10 Q. And you told me, I think, already, but I  
11 forgot, when were you divorced? You were married  
12 three years?

13 A. About '86.

14 Q. From the time you were 20 to when you  
15 were 32 or 33, did your father ever talk to you  
16 about smoking and health?

17 A. No.

18 MR. THOMAS: Could you give me a site on  
19 that, please.

20 MR. RANGLES: Page 31 now.

21 If I could back up, Your Honor.

22 BY MR. RANGLES:

23 Q. From the time you were 20 to when you  
24 were 32 or 33, did your father ever talk to you  
25 about smoking and health?

1           A.    No.  
2           Q.    Did he ever talk to you about your  
3 smoking habits?  
4           A.    No.  
5           Q.    Did your mother ever talk to you about  
6 your smoking?  
7           A.    No.  
8           Q.    Did you ever encourage your father to  
9 quit?  
10          A.    I don't remember.  
11          Q.    Sure. During the time that you smoked,  
12 between the time you were about 20 and the time  
13 you were about 33, did you ever learn from any  
14 source that cigarette smoking could be harmful to  
15 your health?  
16          A.    Yes.  
17          Q.    Were you concerned about your father's  
18 health and his continued smoking?  
19          A.    Yes.  
20          Q.    Apparently, from what you are telling me,  
21 you had learned and you were aware that cigarettes  
22 could be harmful to your health.  
23          A.    Yes.  
24          Q.    And, therefore, you were aware that  
25 cigarettes could be harmful to your father's

1 health?

2 A. Yes.

3 Q. Did you ever talk to your father about  
4 his continued cigarette smoking?

5 A. Not that I remember.

6 Q. Okay. Why don't you put into words, to  
7 the best of your ability, the nature of your  
8 relationship with your father.

9 A. I loved him. I knew he loved me. We  
10 didn't talk a lot about a lot of things, as far as  
11 real personal things. We talked. We smoked. We  
12 talked be things that interested him and things  
13 that we had in common that we liked. He was a  
14 good man. He was always there when I needed him.

15 Q. What did the two of you talk about after  
16 you left the family home?

17 A. Just everyday things. We talked about  
18 sports.

19 Q. He was a big basketball fan, I  
20 understand.

21 A. Yes. Yes.

22 Q. What else?

23 A. We discussed things with other family  
24 members. Things -- nothing really like that was  
25 really deep or anything. It was just about our

1 family and, like I said, things that interested  
2 him, sports, or what he did, or --

3 Q. Did the two of you argue much during the  
4 last ten years of his life?

5 A. Never.

6 Q. You never disagreed on anything?

7 A. Not that I can recall.

8 Q. After you moved out of the family home  
9 for the last time when you were about 30 --

10 A. Yes.

11 Q. -- during the last -- what, you are 45  
12 now, I guess.

13 A. Yes.

14 Q. During those last 15 years, how often  
15 would you see your dad? And I'm sure it would  
16 vary, but give me an average number of times you  
17 would see your dad in a month.

18 A. Three or four times.

19 Q. How often would you talk to him on the  
20 phone?

21 A. Two or three times.

22 Q. And when did you see him, was it when  
23 you'd go over to his house or would he come over  
24 to your house or you'd meet him someplace? What  
25 was typical for you two?

- 1           A.    When I visited him.
- 2           Q.    Prior to your father's death, did you
- 3   ever speak to him about the filing of this
- 4   lawsuit?
- 5           A.    No.
- 6           Q.    Prior to the filing of this lawsuit, did
- 7   you attend any meeting with your father and any
- 8   lawyers?
- 9           A.    No.
- 10          Q.    Before these lawyers were retained by the
- 11   family to represent the family in the lawsuit, do
- 12   you recall having any discussions with your
- 13   brothers or your sisters or your mother about the
- 14   filing of this lawsuit?
- 15          A.    I don't remember. I do not remember.
- 16          Q.    Who would he fish with mostly?
- 17          A.    My mother.
- 18          Q.    Is it fair to say that your father, to
- 19   your knowledge, smoked the entire time you knew
- 20   him?
- 21          A.    Yes.
- 22          Q.    Did you ever see what brands he would
- 23   smoke?
- 24          A.    The one that I remember is Marlboro.
- 25          Q.    Was that filtered or unfiltered

1 cigarettes?  
2 A. I don't recall. I don't remember.  
3 Q. When do you first recall seeing him smoke  
4 Marlboro?  
5 A. When do I first recall?  
6 Q. Yes.  
7 A. I don't remember.  
8 Q. Okay. Were you a youngster?  
9 A. I was young, yeah.  
10 Q. You were young?  
11 A. Oh, yes.  
12 Q. Living at home?  
13 A. Yes.  
14 Q. Do you recall seeing him smoke any other  
15 brand besides Marlboro?  
16 A. Not that I can recall. To my  
17 observation, I -- he smoked by himself.  
18 Q. Did you ever see him smoke with any other  
19 individuals that you can recall?  
20 A. No.  
21 Q. Do you have any personal information as  
22 to how much your father smoked and whether it  
23 changed over the years?  
24 A. I don't know how much exactly he smoked.  
25 Q. Do you have any personal information

1 about any effort your father may have engaged in  
2 to try and stop smoking?

3 A. Anything that -- any personal  
4 information?

5 Q. Yes.

6 A. Like seeing him do it, not personally,  
7 no.

8 Q. Did he ever talk to you about trying to  
9 quit smoking?

10 A. No.

11 Q. Did he ever tell you why he smoked?

12 A. No.

13 Q. To your observation, was he a chain  
14 smoker?

15 A. Yes.

16 Q. Did you ever see him have two cigarettes  
17 lit at the same time?

18 A. Yes.

19 Q. Where would he usually smoke?

20 A. For the most part he smoked in the home,  
21 that I saw. Then I think the last couple of  
22 years, his last couple years he would smoke  
23 outside the home.

24 Q. So from your observations, he would, for  
25 many years, smoke inside the family home?

1           A.    Yes.  
2           Q.    But in the last couple of years of his  
3 life, he smoked outside?  
4           A.    Yes.  
5           Q.    Do you know why he started smoking  
6 outside?  
7           A.    My mother asked him to take it outside.  
8           Q.    You have seen him smoke cigarettes?  
9           A.    Yes.  
10          Q.    Did he seem to enjoy it?  
11          A.    Yes. He seemed to enjoy it.  
12          Q.    And why is that? What did you observe  
13 that led you to that conclusion?  
14          A.    Well, he continued doing it.  
15          Q.    Did smoking, from your observation, seem  
16 to relax him, or give him more energy, or what did  
17 you observe?  
18          A.    Probably seemed to relax him.  
19          Q.    Did he ever tell you that he hated  
20 smoking?  
21          A.    No.  
22          Q.    Did he ever tell you that he wanted to  
23 quit?  
24          A.    No.  
25          Q.    Do you know what efforts specifically



- 1 your father tried to quit smoking, if any?
- 2 A. From my observation?
- 3 Q. Yes.
- 4 A. Seeing him actually doing something?
- 5 Q. Right.
- 6 A. No. Not myself, no.
- 7 Q. Did he ever tell you what efforts he
- 8 tried in order to stop smoking, if any?
- 9 A. No, no, he didn't tell me.
- 10 Q. Did your father ever tell you that he
- 11 felt that he was addicted to cigarette smoking?
- 12 A. No.
- 13 Q. When you were growing up, did your father
- 14 watch the national news on TV occasionally?
- 15 A. Yes.
- 16 Q. I understand that he was an avid reader,
- 17 your father, newspapers and magazines and so
- 18 forth?
- 19 A. Yes.
- 20 Q. Including The Oregonian, he read that?
- 21 A. Yes.
- 22 Q. Did your father ever talk to you about
- 23 advertising, tobacco, cigarette advertising?
- 24 A. No.
- 25 Q. Did your father ever talk to you about

1 any information that he learned from the tobacco  
2 companies?

3 A. No.

4 Q. I did -- let's start over again.

5 Was your father a strong-willed,  
6 opinionated person?

7 A. He was strong-willed, but I don't think  
8 he made his opinions -- he wasn't really  
9 strong-willed as far as making opinions known  
10 about what he believed. I know he was a  
11 strong-willed person, but he didn't -- he wasn't  
12 outspoken.

13 Q. So, in other words, he didn't vocalize  
14 or --

15 A. Right.

16 Q. -- or put his opinions on other people?

17 A. Right.

18 Q. But inside, from your understanding and  
19 knowledge, was he opinionated in his own beliefs?

20 A. Yes.

21 Q. Was he easily swayed by others, or did he  
22 make up his own mind and follow that course?

23 A. Made up his own mind.

24 MR. RANGLES: Your Honor, that completes  
25 the readings.

1 THE COURT: Thank you, Mr. Randles.  
2 Thank you, jurors, for another week's  
3 work. Monday we will start up at nine o'clock.  
4 Leave your notes here. Have a good weekend.  
5 Enjoy this wonderful weather. Don't discuss the  
6 case.

7 Watch your step coming out of the box.

8  
9 (Open court; jury not  
10 present.)  
11

12 THE COURT: Thank you.  
13 The record should show that the DVD and  
14 some --

15 MR. COFER: Exhibits.

16 THE COURT: -- eight and a half by eleven  
17 copies of the poster boards that were used  
18 during the defense case have been delivered.

19 MR. THOMAS: There are still several  
20 missing, and Mr. Cofer says they are going to be  
21 provided over the weekend.

22 THE COURT: Okay. Good.

23 We are off the record.

24 (Evening recess.)  
25



